

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID S. YARNALL,)	
)	
Plaintiff,)	
)	CONSOLIDATED
v.)	Civ. No. 05-527-SLR
)	Civ. No. 06-501-SLR
CPL. ANTHONY MENDEZ, DELAWARE)	Civ. No. 06-529-SLR
STATE POLICE TROOP 7,)	
PTLM LOWE, UNKNOWN OFFICERS)	
WHO RESPONDED TO SCENE OF)	
MILLSBORO POLICE, and)	
PFC BUCHERT,)	
)	
Defendants.)	

ORDER

At Wilmington this ~~30th~~ day of September, 2006, plaintiff having satisfied the filing prerequisites of 28 U.S.C. § 1915A; and the court having identified cognizable claims within the meaning of 28 U.S.C. § 1915A(b);

IT IS ORDERED that:

1. The clerk of the court shall cause a copy of this order to be mailed to plaintiff.
2. When plaintiff learns the identities of the Unknown Officers who responded to scene of Millsboro Police, he shall immediately move the court for an order directing amendment of the caption and service of the complaint upon them.
3. Pursuant to Fed. R. Civ. P. 4(c)(2) and (j), plaintiff shall complete and return to the clerk of the court an **original** "U.S. Marshal-285" form for **defendants PTLM Lowe and PFC Buchert.**

Plaintiff shall also provide an **original** "U.S. Marshal-285" form for the **Chief Executive Officer for the City of Millsboro, Delaware**. Additionally, plaintiff shall provide the court with copies of the complaints filed in Civ No. 05-527-SLR, Civ. No. 06-501-SLR, and Civ. No. 06-529-SLR, all found at D.I. 2, and the amended complaint in Civ. No. 05-527-SLR, found at D.I. 36 for service upon each defendant as well as for chief executive officer for the City of Millsboro, Delaware. **Failure to provide the "U.S. Marshal 285" forms for the defendants and the chief executive officer for the City of Millsboro, Delaware within 120 days of this order may result in the complaint being dismissed or defendant(s) being dismissed pursuant to Federal Rule of Civil Procedure 4(m).**

4. Upon receipt of the form(s) required by paragraph 3 above, the United States Marshal shall forthwith serve a copy of the complaint (D.I. 2) and amended complaint (D.I. 36) filed in Civ No. 05-527-SLR, the complaint (D.I. 2) filed in Civ. No. 06-501-SLR, and the complaint (D.I. 2) filed in Civ. No. 06-529-SLR, this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon each of the defendants so identified in each 285 form.

5. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a

defendant, the United States Marshal shall personally serve said defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

6. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

7. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

8. **NOTE: ***** When an amended complaint is filed prior to service, the court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). *******

9. **NOTE: ***** Discovery motions and motions for appointment

of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. ***


UNITED STATES DISTRICT JUDGE